

STATE OF LOUISIANA, THROUGH  
ITS DIVISION OF ADMINISTRATION,  
OFFICE OF FACILITY PLANNING  
AND CONTROL

CASE NO:                      SECTION:  
  
19<sup>TH</sup> JUDICIAL DISTRICT COURT

VERSUS

M.D. DESCANT, INC.; WESTERN  
SURETY COMPANY; and BITUMINOUS  
CASUALTY CORPORATION

PARISH OF EAST BATON ROUGE  
  
STATE OF LOUISIANA

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**PETITION FOR DAMAGES**

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Petitioner, the State of Louisiana, through its Division of Administration, Office of Facility Planning and Control (hereinafter, the “State”), respectfully represents:

1.

The State names the following defendants in this proceeding:

- (a) M.D. Descant, Inc. (hereinafter, “Descant”), a domestic corporation domiciled in the State of Louisiana, parish of Avoyelles;
- (b) Western Surety Company (hereinafter “Western”), a foreign company domiciled in the State of South Dakota, and licensed to do and doing business in the State of Louisiana; and
- (c) Bituminous Casualty Corporation (hereinafter, “Bituminous”), a foreign corporation domiciled in the State of Illinois, and licensed to do and doing business in the State of Louisiana.

2.

On or about June 27, 2007, the State and Descant entered into a public works contract (the “Contract”), under which Descant agreed to furnish all labor and materials and perform all of the work required to build, construct, and complete, in a thorough and workmanlike manner, and in strict accordance with the contract documents, the project identified as “Louisiana State Arboretum, Chicot State Park, Ville Platte, Louisiana, Louisiana State Project No. 06-264-99B-02 Part 01” (hereinafter the “Project”).

3.

Pursuant to La. R.S. 38:2181(B) and Article 13.4.3 of the Contract’s Supplementary Conditions, this Court has jurisdiction and venue over disputes arising in connection with the Contract.

4.

On or around June 29, 2007, the State issued a Notice to Proceed, which notified Descant to commence work on or before July 16, 2007 and to complete work by July 16, 2008.

5.

Subsequent change orders extended the contract completion date to October 22, 2008.

6.

The Project was accepted as substantially complete on November 13, 2008, and a Notice of Acceptance was recorded in the office of the Clerk of Court and Recorder of Mortgages for the Parish of Evangeline.

7.

Descant was paid all sums due to it under the terms of the Contract.

8.

Part of the work encompassed under the terms of the Contract required Descant to construct an entrance road to the Arboretum Visitor Center. Since the completion of the Contract, the State has continuously occupied the Project and has experienced problems with the entrance road, including but not limited to, excessive linear cracking in the asphalt surface and base material, horizontal surface separation, and vertical separation of the road surface and base.

9.

The excessive cracking and separation of the roadway have impaired the State's use of the premises and have damaged the State.

10.

Upon information and belief, the deficiencies in the entrance road are the result of, but are not limited to:

- (a) Descant's breach of its obligations under the Contract to faithfully perform its work in a thorough and workmanlike manner; and/or
- (b) Descant's breach of its obligations under the Contract to construct the entrance road in strict accordance with the plans and specifications set forth in the Contract; and/or
- (c) Negligence on the part of Descant or its subcontractors in the construction of the Project.

11.

Descant has been informed of the deficiencies in the roadway and has repeatedly attempted to remedy the defects. To date, the defects still exist.

12.

Under the contract and law, Descant is liable to the State for the damages sustained as a result of it breaching its contractual obligations. These damages include, but are not limited to, the costs necessary to identify and correct all deficiencies with the entrance road, the costs required to

hire a remediation contractor to repair the entrance road, costs owed to design professionals and/or experts for investigation, all other direct and consequential damages the State has sustained, as well as all other damages as may be shown at a trial of this matter, including court costs and legal interest from the date of judicial demand.

13.

In accordance with the Contract and La. R.S. 38:2219, Western executed a performance and payment bond in favor of the State, promising, among other things, to fulfill the Descant's obligations under the Contract, in the event Descant failed to perform the Contract in accordance with its terms and conditions.

14.

Descant's failure to construct the entrance road in accordance with the plans and specifications, and/or complete the Project in a thorough and workmanlike manner constitute a failure to perform, which triggers Western's duty under the Performance Bond to fulfill Descant's obligations under the Contract.

15.

Western is, therefore, liable to the State for all damages specified in paragraph twelve of this Petition, that were incurred or will be incurred as a result of Descant's breach of its obligations under the provisions of the Contract.

16.

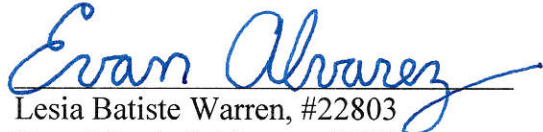
Upon information and belief, Bituminous issued various insurance policies which inure to the benefit of the State and which provide coverage for the circumstances of liability alleged herein, including a Commercial General Liability policy naming Descant as its insured. Bituminous is, therefore, liable to the State for any damages caused by Descant, which are contemplated under the applicable insurance policies.

**WHEREFORE**, the State prays that the defendants be served with a copy of this Petition for Damages and that, after due proceedings, this Honorable Court render a judgment in favor of the State and against the defendants for all direct and consequential damages the State has sustained, along with all other damages which may be proven at trial, together with legal interest from the date of judicial demand, all costs of this proceeding, and all equitable relief to which the plaintiff may be entitled.

[Signature Page Follows]

Respectfully Submitted by:

**STATE OF LOUISIANA, DIVISION OF  
ADMINISTRATION, OFFICE OF  
GENERAL COUNSEL**



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**ATTORNEYS FOR THE DIVISION OF  
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**PLEASE SERVE:**

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**WESTERN SURETY COMPANY**

*through its agent for service:*  
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Secretary of State, State of Louisiana  
8585 Archives Avenue  
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**BITUMINOUS CASUALTY CORPORATION**

*through its agent for service:*  
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